

MOKHTAR ABDUL RAZAK & ANOR.

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v.

SHAMSIAH SAMAN (MENDAKWA SEBAGAI BALU DAN
BENEFISIARI KEPADA ABDUL RAZAK HJ. SENAWI, SIMATI)

COURT OF APPEAL, KUALA LUMPUR
DATO' SHAIK DAUD MOHD. ISMAIL JCA

b

DATO' N.H. CHAN JCA
DATO' ABU MANSOR ALI JCA
[CIVIL APPEAL NO: P-04-39 OF 1995]
15 JANUARY 1996

c

DAMAGES: *Fatal accident - Dependency claim by widow of deceased - Loss of support - Section 7 Civil Law Act 1956 - Widow being paid compensation under the Employees Social Security Act 1969 (Socso Act) - Defendants in dependency claim not employers or co-workers of deceased - Whether claim under s. 7 could properly proceed - Whether barred by s. 42 of Socso Act - Civil Law Act 1956 ss. 7, 7(3)(i)(d) - Employees Social Security Act 1969 ss. 31, 42.*

d

INTERPRETATION: *Section 42 Employees Social Security Act 1969 - Whether to be read in isolation - Whether to be read together with s. 31 thereof - Proper effect.*

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WORDS & PHRASES: *"Benefit or compensation" - Section 7(3)(i)(d) Civil Law Act 1956.*

The respondent is the widow of one Abdul Razak bin Hj. Senawi, who died when the motorcycle he was riding collided with the bus driven by the first appellant and owned by the second appellant. Following the accident, the respondent filed a dependency claim and a claim for funeral expenses from the appellants under s. 7 Civil Law Act 1965. The facts however showed that, as a result of the fatal accident, the respondent was entitled to and was in fact receiving benefits under the Employees Social Security Act 1969 (the Socso Act). This being the case, a question arose in this appeal as to whether the respondent, having received the aforesaid benefits, was barred from claiming under the said s. 7 on account of s. 42 of the Socso Act which reads "When a person is entitled to any of the benefits provided by this Act, he shall not be entitled to receive any similar benefit admissible under the provisions of any other written law". It was not in dispute that neither the first nor the second appellant was the employer or co-worker of the deceased.

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a **Held:**

Per Shaik Daud Mohd. Ismail JCA (delivering the judgment of the Court):

- b* [1] It is not disputed that there is no express provision in s. 7(3)(i)(d) Civil Law Act 1956 excluding the Socso Act or any other Act for that matter, but the expressions “benefit or compensation” therein are deliberately inserted to cover dependant benefits which can only be obtained under the Socso Act and compensation under the Workmen’s Compensation Act. The language used must necessarily refer to benefits under the Socso Act.
- c*
- d* [2] The provisions of s. 42 Socso Act has no application to claims against third parties who are neither the employer nor the co-worker of the insured. To hold otherwise would cause an injustice to employees who had taken private personal accident policies. This is because the benefits they could claim under the personal accident policies would be tantamount to similar benefits under Socso Act and the bar of s. 42 Socso Act would deprive them of the benefits for which they had been paying premiums for a number of years, and would also allow third parties who negligently caused the death of the insured to go scot-free.
- e*
- f* [3] Section 42 Socso Act ought not to be read in isolation but should be read together with s. 31 of the Act. In doing so, it can be seen at once that the bar (in s. 42) must necessarily be against the employer or co-worker of the insured person.
- g* [4] The respondent herein is not claiming against the deceased’s employer or co-worker but against a third party who had been negligent in causing the death of the insured. In the circumstances this Court would agree with the learned High Court Judge that s. 42 read with s. 31 Socso Act in no way impose a bar to the dependants of the insured to claim against third parties who are not the insured’s employer or his co-worker.

[Appeal dismissed]

[Bahasa Malaysia Translation of Headnotes]

- h* **GANTIRUGI:** *Kemalangan maut - Tuntutan tanggungan oleh balu simati - Kehilangan penyara - Seksyen 7 Akta Undang-Undang Sivil 1956 - Balu dibayar pampasan di bawah Akta Keselamatan Sosial Pekerja 1969 (Akta Perkeso) - Defedan-defendan dalam tuntutan tanggungan bukannya merupakan majikan atau rakan sekerja simati - Samada tuntutan di bawah s. 7 boleh diteruskan - Samada dihalang oleh s. 42 Akta Perkeso*
- i* *- Akta Undang-Undang Sivil 1956 ss. 7, 7(3)(i)(d) - Akta Keselamatan Sosial Pekerja 1969 ss. 31, 42.*

PENTAFSIRAN: Seksyen 42 Akta Keselamatan Sosial Pekerja 1969 - *Samada hendaklah dibaca secara bersendirian - Samada hendaklah dibaca bersama-sama dengan s. 31 di dalamnya - Kesan yang wajar.* a

PERKATAAN & ISTILAH: “Faedah atau pampasan” - Seksyen 7(3)(ii)(d) Akta Undang-Undang Sivil 1956. b

Responden adalah balu seorang yang bernama Abdul Razak bin Hj. Senawi, yang telah mati bilamana motosikal yang ditunggangnya berlanggar dengan sebuah bas yang dipandu oleh perayu pertama dan dimiliki oleh perayu kedua. Berikutan dengan kemalangan itu, responden telah memfailkan tuntutan tanggungan dan satu tuntutan untuk perbelanjaan pengkebumian daripada perayu di bawah s. 7 Akta Undang-Undang Sivil 1965. Fakta-fakta walaubagaimanapun menunjukkan bahawa, akibat kemalangan itu, responden adalah berhak kepada dan telah pada hakikatnya menerima faedah-faedah di bawah Akta Keselamatan Sosial Pekerja 1969 (Akta Perkeso). Dalam keadaan ini, satu persoalan telah berbangkit dalam rayuan ini samada responden, setelah menerima faedah-faedah yang di atas, telah terhalang daripada menuntut di bawah s. 7 oleh s. 42 Akta Perkeso yang berbunyi “when a person is entitled to any of the benefits provided by this Act, he shall not be entitled to receive any similar benefit admissible under the provisions of any other written law”. Tidak dipertikaikan bahawa perayu pertama mahupun kedua bukanlah merupakan majikan atau rakan sekerja simati. c d e

Diputuskan:

Oleh Shaik Daud Mohd. Ismail HMR (menyampaikan penghakiman Mahkamah): f

[1] Ianya tidak dipertikaikan bahawa tidak terdapat peruntukan nyata dalam s. 7(3) (i) (d) Akta Undang-Undang Sivil 1956 yang mengenepikan Akta Perkeso atau mana-mana Akta yang lain, tetapi ungkapan “benefit or compensation” di dalamnya telah dimasukkan dengan sengaja bagi meliputi faedah-faedah orang tanggungan yang mana hanya boleh diperolehi di bawah Akta Perkeso dan Pampasan Pekerja. Tidak dapat tidak bahasa yang digunakan merujuk kepada faedah-faedah di bawah Akta Perkeso. g

[2] Peruntukan s. 42 Akta Perkeso tidak terpakai kepada tuntutan terhadap pihak ketiga yang tidak merupakan majikan mahupun rakan sekerja pihak yang diinsuranskan. Untuk memutuskan sedemikian, akan menyebabkan suatu ketidakadilan kepada pekerja-pekerja yang telah mengambil polisi-polisi kemalangan persendirian. Ini adalah kerana faedah-faedah yang boleh mereka menuntut di bawah polisi kemalangan persendirian akan menjadi sama seperti faedah-faedah di bawah Akta Perkeso dan halangan dalam s. 42 Akta Perkeso akan melucut daripada mereka faedah-faedah bagi yang mana mereka telah membayar premium bagi tempoh beberapa tahun, dan akan juga membenarkan pihak-pihak ketiga yang telah dengan cuainya menyebabkan kematian pengambil insurans itu, bebas tidak didakwa. h i

- a* [3] Seksyen 42 Akta Perkeso tidak seharusnya dibaca bersendirian tetapi haruslah dibaca bersama-sama dengan s. 31 Akta tersebut. Melakukan sedemikian, ianya boleh serta-merta dilihat bahawa halangan (dalam s. 42) hanya terpakai terhadap majikan atau rakan sekerja orang yang diinsuranskan.
- b* [4] Responden di sini tidak menuntut terhadap majikan atau pekerja bersama simati tetapi terhadap pihak ketiga yang cuai dalam menyebabkan kematian pengambil insurans. Dalam keadaan sedemikian Mahkamah bersetuju dengan Hakim Mahkamah Tinggi yang bijaksana bahawa s. 42 dibaca dengan s. 31 Akta Perkeso tidak mengenakan apa-apa halangan kepada tanggungan pengambil insurans untuk menuntut terhadap pihak-pihak ketiga yang bukannya merupakan majikan atau rakan sekerja pihak pengambil insurans.
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[Rayuan ditolak]

Cases referred to:

- d* *Koay Tuan & Anor. v. Eng Chong How & Anor.* [1987] 1 MLJ 422 (*ovrd*)
Che Noh b. Yaakob v. Seng Hin Rubber (M) Sdn. Bhd. [1982] 1 MLJ 80 FC (*dist*)
Tan Peng Loh v. Lee Aik Fong & Anor. [1982] 1 MLJ 74 FC (*dist*)

Legislation referred to:

- Civil Law Act 1956, ss. 7(3)(i)(d), 8
e Employees Social Security Act 1969, ss. 31, 42

JUDGMENT

Shaik Daud Mohd. Ismail JCA:

- f* This is an appeal from the decision of the Penang High Court which had confirmed the decision of the Penang Session Court in allowing a claim by the widow of a deceased person who had died in a road accident. At first glance this claim appear to be a straight-forward case of an accident claim by the widow of the deceased person involved in the accident. This claim
- g* although being a claim under s. 7 of the Civil Law Act 1956 also involves the provisions of s. 42 of the Employees Social Security Act 1969 popularly known as the Socso Act.
- The facts of the case are not in dispute and they are that on 2 April 1992 one Abdul Razak b. Hj. Senawi while riding his motorcycle home from work
- h* unfortunately was involved in a fatal accident with a bus belonging to United Traction Company Sdn. Bhd., the second appellant and driven by Mokhtar b. Abdul Razak, the first appellant.
- Shamsiah bte Saman the widow filed a dependency claim and for funeral
- i* expenses from the appellants under s. 7 of the Civil Law Act 1956. The respondent claimed that the accident was as a result of the negligence of the first appellant as servant of the second appellant.

It is also not disputed that the respondent is entitled to and is in fact receiving benefits under the Socso Act. The appellants in the Session Court, the High Court and this Court contend that since the respondent is entitled to and is in fact receiving benefits under the Socso Act, s. 42 of the Act bars her from claiming similar benefits from them. The learned Session Court Judge was of the view that the respondent was not prohibited by s. 42 of the Act from making a claim under the Civil Law Act 1956 as amended. The appellants appealed to the High Court which appeal was dismissed and the High Court confirmed the decision of the learned Session Judge.

It is pertinent at this stage to set out the provisions of s. 42 Socso Act which reads:

When a person is entitled to any of the benefits provided by this Act, he shall not be entitled to receive any similar benefit admissible under the provisions of any other written law.

Learned Counsel for the appellants submits that in view of this clear provision, and since respondent was entitled to and is in fact receiving similar benefits under the Socso Act, the bar imposed by s. 42 of the Socso Act is available to the appellants. He cited the case of *Koay Tuan & Anor. v. Eng Chong How & Anor.* [1987] 1 MLJ 422. In that case the plaintiffs are the administratrix and administrator of the estate of one Teh Keat Leng deceased who worked as a supervisor for Seng Hing Sawmill. The deceased was killed when a timber load fell on him from a lorry driven by first defendant and owned by second defendant. As the deceased was insured under Socso by Seng Hing sawmill, the first plaintiff who was the widow of the deceased had been and was still receiving dependant benefits under Socso Act. The plaintiffs have pursuant to ss. 7 and 8 of the Civil Law Act 1956 also filed a suit claiming damages for the dependants of the deceased against the first defendant the driver of the lorry and the second defendant as his employer. It must be noted that the second defendant was not the employer of the deceased and the first defendant was also not his co-worker.

One of the issues before the Court was whether an amount of general damages for loss of support recoverable by the plaintiffs under s. 7 of the Civil Law Act 1956 from a party who was neither his employer nor his co-worker amounts to a similar benefit admissible under the provisions of any other written law within the meaning of s. 42 of the Socso Act 1969. The Court held that:

An amount of general damages in respect of dependency claim under s. 7 of the Civil Law Act 1956, being intended to compensate the dependant of the deceased in respect of loss of support is similar to “dependants benefit” within the meaning of s. 15(1)(c) of the Act. Accordingly, the bar imposed by s. 42 of the Act is available to the defendants insofar as the claim for loss of dependency under s. 7 of the Civil Law Act, 1956, is concerned.

a Section 31 of the Socso Act as amended provides:

An insured person or his dependants shall not be entitled to receive or recover from the employer of the insured person, or from any other person who is the servant of the employer, any compensation or damages under any other law for the time being in force in respect of an employment injury sustained as an

b employee under this Act.

From this provision it would appear, with respect, that the decision in *Koay Tuan's* case had widened the scope of the bar to include third parties who are not the insured's employer or his co-worker.

c Section 42 Socso Act appear to afford a complete bar to a claim under s. 7 of the Civil Law Act 1956. Section 7, however, was amended in 1975. The amended provision is in the proviso (i)(d) to s. 7(3), which provides:

Provided that –

d (i) in assessing the damage there shall not be taken into account –

(a) ...

(b) ...

(c) ...

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(d) any sum which has been or will or may be paid under any written law relating to the payment of any benefit or compensation whatsoever, in respect of the death.

f It is submitted by learned Counsel for the appellant that inspite of the amended provision as above, and by virtue of the bar imposed in s. 42 of the Socso Act, the respondent in the present appeal cannot, therefore, maintain her claim for dependency and funeral expenses under s. 7(3)(i)(d) of the Civil Law Act 1956. He adds that the facts in the present appeal are similar to the facts in the *Koay Tuan's* case and the decision in that case must, therefore, apply to the present appeal. He further submits that the amended s. 7(3)(i)(d) of the Civil Law Act 1956 although later in time has not by implication abrogated the special earlier provisions of s. 42 Socso Act, based on the well known *maxim generalia speciallibus non derogant*, i.e, a general later law does not abrogate an earlier special one by mere implication.

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h It is not disputed that there is no express provision in s. 7(3)(i)(d) Civil Law Act 1956 excluding the Socso Act or any other Act for that matter but the expressions “benefit or compensation” to our minds are deliberately inserted to cover dependant benefits which can only be obtained under the Socso Act and compensation under the Workmen's Compensation Act. To our minds the language used must necessarily refer to benefits under Socso Act. In our view the provisions of s. 42 Socso Act has no application to claims against third parties who are neither the employer nor the co-worker of the insured. To

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hold otherwise would cause an injustice to employees who had taken private personal accident policies. Since the benefits they could claim under the personal accident policies would be tantamount to similar benefits under Socso Act and the bar of s. 42 Socso Act would deprive them of the benefits for which they had been paying premiums for a number of years, and would also allow third parties who negligently caused the death of the insured to go scot-free. We are of the view that the provisions of s. 42 Socso Act ought not to be read in isolation. It should be read with the provisions of s. 31 Socso Act. In doing so it can be seen at once that the bar must necessarily be against the employer or co-worker of the insured person. It can be seen in two other cases i.e. *Che Noh b. Yaakob v. Seng Hin Rubber (M) Sdn. Bhd.* [1982] 1 MLJ 80 FC and *Tan Peng Loh v. Lee Aik Fong & Anor.* [1982] 1 MLJ 74 FC the Court held that s. 42 is a complete bar as the claim there were against the employer of the insured. Therefore the dependants ought not to be allowed to get double benefits from the employer. Having obtained benefits under the Socso Act they are therefore barred from claiming similar benefits from the same employer. In the light of this we would agree with the reasonings and finding of the learned High Court Judge, we find ourselves, with respect, unable to agree with the decision in *Koay Tuan's* case which held that a workman subjected to benefits under the Socso Act is barred from claiming under s. 7 of the Civil Law Act 1956 against third parties who are not his employer or co-worker.

In the present appeal the respondent herein is not claiming against the deceased's employer or co-worker but against a third party who had been negligent in causing the death of the insured.

We would agree with the learned High Court Judge that s. 42 read with s. 31 Socso Act in no way impose a bar to the dependants of the insured to claim against third parties who are not the insured's employer or his co-worker. We would therefore dismiss the appeal with costs and the deposit is to go towards costs to be taxed if not agreed.

Reported by W.A. Sharif